

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WIMBERLY HOWARD,

Defendant-Appellant.

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UNPUBLISHED

July 23, 2002

No. 232228

Wayne Circuit Court

LC No. 00-008270

Before: Talbot, P.J., and cooper and D.P. Ryan\*, JJ.

MEMORANDUM.

Defendant appeals as of right from convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to prison terms of four months' to four years' and two years', respectively. We affirm.

Defendant contends that the trial court erred in denying his motion to suppress the weapon because the police entered his house to arrest him without a warrant. The trial court's ruling on a motion to suppress the evidence is reviewed under the de novo standard for all mixed questions of law and fact and for all pure questions of law. *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998).

"The police must have an arrest warrant before entering a suspect's residence to conduct a routine felony arrest, absent the existence of exigent circumstances or consent." *People v Adams*, 150 Mich App 181, 184; 388 NW2d 254 (1986). "The essence of the exigency which would excuse the failure to obtain a warrant is the existence of circumstances known to the police which prevent them from taking the time to obtain a warrant because to do so would thwart the arrest." *People v Parker*, 417 Mich 556, 561; 339 NW2d 455 (1983). Whether exigent circumstances exist depends on a number of factors. *People v Oliver*, 417 Mich 366, 384; 338 NW2d 167 (1983). These factors include (1) whether the crime was serious or involved violence; (2) whether the defendant is reasonably believed to be armed; (3) whether the defendant is reasonably believed to be in the premises; (4) whether there is a clear showing of probable cause; (5) whether it is likely that the defendant will escape if not apprehended; (6) whether the entry is forcible or peaceful; and (7) whether the entry is made during the day or night. *Id.* Other relevant factors include the need to prevent destruction of evidence, the need to ensure the safety of the officers involved or other citizens, and the ability to secure a warrant. *Id.*

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\* Circuit judge, sitting on the Court of Appeals by assignment.

The factors supporting a finding of exigency are: one, based on information supplied by the victim, the police had reason to believe defendant was armed and was in his mother's house; two, defendant does not dispute the existence of probable cause and we find a clear showing of probable cause upon review of the record; three, the entry was made during the day and was not forcible; and four, defendant had constructive possession of a loaded weapon, which created a need for immediate action to ensure the officers' safety. Given the circumstances of this case, we conclude that exigent circumstances did exist for the warrantless arrest. Therefore, the trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Michael J. Talbot

/s/ Jessica R. Cooper

/s/ Daniel P. Ryan